DOCUMENT RESUME

ED 447 576 EA 030 730

AUTHOR	Ley, Joyce
TITLE	Charter Starters Leadership Training Workbook 2: Regulatory Issues.
INSTITUTION	Northwest Regional Educational Lab., Portland, OR.
SPONS AGENCY	Office of Educational Research and Improvement (ED), Washington, DC.
PUB DATE	1999-07-00
NOTE	54p.; For others in the Charter Starters series, see EA 030 729-733.
CONTRACT	SB97023101
AVAILABLE FROM	Northwest Regional Educational Laboratory, 101 SW Main, Suite 500, Portland, OR 97204. Tel: 800-547-6339 (Toll Free).
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Charter Schools; Civil Rights; Educational Policy; Elementary Secondary Education; *Federal Regulation; Leadership Training; Nontraditional Education; *Program Implementation; School Policy; *Workbooks
IDENTIFIERS	Chartering Process

ABSTRACT

This workbook is part of a series devoted to all areas of charter-school development. The second of the series, this volume focuses on regulatory issues, such as special-education requirements, civil-rights regulations, federal and state laws and regulations, and requirements for parent involvement. The text is divided into four sections. Chapter one discusses civil-rights and the various issues surrounding this area of law. The chapter looks at specific equity challenges, such as selection of students, and general civil rights laws. The latter section examines the Civil Rights Act of 1964 and other legislative initiatives that address civil rights. Chapter two details various requirements in special education, offering suggestions for determining special-education eligibility, for ensuring compliance, and for accessing special-education funds. The next chapter discusses other federal regulations, such as the Equal Access Act and the Drug Free Workplace Act of 1988, and the various requirements of these laws. The last chapter dwells on state regulatory issues, such as legal status and waiver status and what must be done to comply with state laws. Each chapter features a set of "tools" that offer contact information, glossaries of terms, and other material to help found a charter school. (RJM)

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Charter Starters

Leadership Training Workbook 2

Regulatory Issues

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Charter Starters
Leadership Training
Workbook 2

Regulatory Issues

Rural Education Program
Dr. Joyce Ley, Director

July 1999

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Preface

The Charter Starters Workbook series provides material and resources in all areas of charter school development. The material is based on five core content areas, and each workbook in the series is meant to stand alone:

- **Workbook 1: Start-Up Logistics**—drafting a charter, creating a vision and mission, developing a core founding group, accessing expert information, navigating the application process, acquiring a facility, allocating resources, establishing a legal entity, and contracting for services
- **Workbook 2: Regulatory Issues**—special education requirements, civil rights regulations, federal and state laws and regulations, and requirements for parent involvement
- **Workbook 3: Assessment and Accountability**—academic accountability, fiscal accountability, public/parental accountability, rule compliance, assessment and evaluation, financial management, developing a business plan, and how vision and mission connect with assessment and accountability
- **Workbook 4: Governance and Management**—creating an organizational structure, establishing strong leadership, handling personnel issues, developing internal policies, creating a board and board bylaws, managing growth, and dealing with liability issues
- **Workbook 5: Community Relations**—coordinating public relations, marketing the school, and dealing with controversy

The workbooks are targeted toward both charter school founders/developers and charter school trainers. Although originally designed as the training material for a five-day training academy, each workbook is relatively self-contained. This workbook contains information on regulatory issues.

Two precautions:

1. *The information that is provided in this workbook is not intended to be prescriptive. We encourage charter school founders to be creative and to innovate as they develop unique schools that serve the needs of their communities.*
2. *All information contained in this workbook should be considered as informational only and should not substitute for legal advice. We recommend that charter school developers obtain legal counsel whenever appropriate. We also advise that materials in this workbook, whenever possible, be tailored according to state specifications; the information in the workbook is not state-specific.*

Conventions and features used in the series

Resource tools follow each subsection of each workbook. These tools fall into five categories: activities, samples, checklists, detailed information, and resources. References to tools within workbooks are labeled with icons so you can easily identify each tool's category.

Tools labeled	Are
	Activities to help you actually begin working on ideas and solutions.
	Sample forms/policies for you to use as examples in making your own forms and policies.
	Checklists to help you keep track of what's done and what you still need to work on.
	Detailed information on a particular issue, such as a matrix, list of addresses, or federal regulation.
	Resources that list places to go for more information, including the Internet.

NWREL staff are available to provide assistance and direction in using the workbooks to develop training sessions for charter school developers. This includes providing training based on workbooks and/or providing assistance in finding expert trainers for specific topics. Additional questions, comments, or recommendations regarding the information in the workbook series are welcome and can be addressed to the Rural Education Program (phone: 1-800-547-6339, ext. 546; e-mail: ruraled@nwrel.org).

Civil Rights

Key equity issues affecting charter schools, as well as traditional public schools, are important because of the very nature of choice associated with charter schools. The growth of the education reform movement is one that provides choice for students traditionally "short-changed" in the educational process such as lower-income students, racial and ethnic minorities, limited-English-proficient (LEP) students, students with disabilities, and female students (Equity Center, 1998). The U.S. Department of Education's and RPP International's National Study of Charter Schools (1997) shows that charter schools serve a slightly higher percentage of ethnic minorities and a slightly lower percentage of students with disabilities than traditional public schools. As a charter school operator, all of the issues surrounding equity have become important. In the past, there has been some criticism concerning charter schools and the way in which equity has been addressed. As public schools, charter schools must comply with civil rights; no charter school is exempt. This issue of compliance has often been a misconception.

See the Special Education section in this workbook for more information.

Because compliance is such an important issue, charter schools find it helpful to create policies and procedures that are directly influenced by the laws. This influence will help the school implement the laws into policy and the policy into practice.

Specific Equity Challenges

Impact on Public School Districts

"Ideally, advocates envision charter schools as laboratories of innovation, providing districts with successful ideas while offering students unique educational opportunities" (Equity Center, 1998). The reality of the impact on public school systems is that charter schools will draw students and per-pupil funding away from some districts. Another concern is that charter schools might be taking away the "best" and "brightest" students or may be upsetting current racial balances. In order to avoid these concerns, make sure your school is in compliance with civil rights laws and knowledgeable of the district policies and plans.* Also, from the beginning, work with your local school district to share equity concerns and helpful practices to alleviate problems.

Selection of Students

Charter school legislation and guidelines, in both state and federal sectors, have been drafted to ensure compliance with all civil rights laws. Federal legislation statutes specify that any school receiving federal funding must be open to all

*NOTE: An explanation of the relevant civil rights laws directly follows this section.

students who apply, or admit students by a lottery process if applications exceed demand. Several state laws contain provisions to make sure charter schools are open to all, including:

- Lottery systems
- Transportation for lower-income students
- Forbidding exclusion of children based on intellectual or academic ability
- Enrollment must reflect the demographics of the student population in the district
- A certain percentage must target students who do not achieve their potential in a traditional school setting (Equity Center, 1998)

Charter schools need to be aware of including minority and limited-English-proficient (LEP) students and not discriminating against students on the basis of race, color, national origin, sex, or disability.

Family Involvement

Many charter schools require parental involvement in the school. Family involvement becomes an equity challenge when the schools are faced with figuring out how to involve parents, children, and others, in the learning process if the communicator and the communicatee speak two different languages, or if there is some other type of barrier between them. Suggestions to keep in mind when developing involvement requirements include:

- Communicate these requirements clearly with potential parents
- Define family involvement broadly
- Offer a wide variety of activities at different times to ensure all families will be able to participate (i.e., copies of materials in all necessary languages). Offer child care, transportation, and interpretation services as needed (Equity Center, 1998)

Family involvement is an important process in the child's education, and charter schools, as schools of choice, should create an atmosphere to help maintain a cohesive community. Review your state charter school law to see if involvement requirements are allowed. The school also needs to decide if you will require or just suggest parental involvement.

See the Internal Policy Development section of the Governance and Management workbook for more information.

"Fifty-eight percent of all charter schools report a lack of start-up funds as a significant obstacle to charter implementation; 41 percent cite inadequate operating funds as a significant obstacle" (Klein, Owens-West, Cohen, & Ogden, 1999). Strict budgets can have a negative effect on equity issues. Problems often include facilities, transportation, and special education resources. Lack of funding is not a valid reason to exclude students, nor is exclusion legal. Therefore, charter schools must be creative in their quest for solutions to the budget problems. Examples of creative solutions include (Equity Center, 1998):

- Donated portable classrooms, a cheap land lease, and volunteer labor
- Collaboration with local businesses and large corporations for investment strategies and donations
- Identification of a local foundation in your area that supports what you want to do
- Writing grants to receive additional support
- Fundraising
- Utilizing volunteers

Funding issues are almost always of great importance to charter schools. Funding can be difficult to access if schools do not know the process of applying for and receiving funds or what type of funds they are applying for. For charter schools, start-up funding is often the most difficult hurdle.

Funding Process:

The U.S. Department of Education distributes most federal public education funds directly to the state departments of education, which then disburse the funds to individual schools and districts. "Federal legislation usually defines an eligible recipient of federal funding at the state level as a State Education Agency (SEA). An eligible recipient at the district and school level is generally defined as a Local Education Agency (LEA)" (Klein et al., 1999). The funding process depends on if the charter school is an independent LEA or dependent on the district LEA. The federal education grant funds are distributed in one of two ways: (1) from the U.S. Department of Education to the state education agency to the individual schools (dependent); or (2) directly from the U.S. Department of Education through its own application process to the individual schools (independent). The latter makes the funding process much easier for charter schools to receive their full allotted amount, thus avoiding confusing district channels.

Federal Grants:

Formula Grants: Federal funds provided under a formula grant program are allotted to all eligible applicants according to a prescribed formula generally established by law and the U.S. Department of Education. "Eligibility for such funds is based on a set of criteria such as population, per capita income, specialized clientele, or some other measure of need, or a combination of measures specified in the authorizing legislation" (Klein et al., 1999).

Discretionary Grants (also known as competitive grants): A discretionary grant is one that the U.S. Department of Education or another branch of the federal government awards through a competitive process. These grants require the establishment of criteria for eligibility, for program size and growth, and some mechanism for competition among applicants.

See the Resources and Sources of Funding section of *Workbook 1: Start-Up Logistics* for more information.

See Tool I: Federal Funding Program Description for more information.

Accountability

Understand that all charter schools are held accountable for their students' performance. Oftentimes accountability is difficult to meet when a school is dealing with equity issues. NWREL (1998) suggests that "ensuring equity in terms of selection, enrollment, curriculum, assessment, instruction, and interactions should also be part of a charter's goals and accountability system."

See *Assessment and Accountability* for more information.

Teacher Certification*

Many states exempt charter schools from teacher certification requirements and collective bargaining agreements. Many teacher unions see this as a threat to their existence. Some unions claim that charter schools should promote equity by example; others believe that if the charter school movement calls for innovation, then teachers should move away from the traditional education method of unions. Some suggest that in order to promote collaboration, charter schools may want to specify that a certain number of teachers must be certified; allow teachers to join the local union and bargain collectively; and pursue legislation concerning retirement (Equity Center, 1998).

*NOTE: Certification requirements are state specific, refer to your state charter law for more information.

Special Education

Charter schools are legally and financially responsible for serving students with disabilities (Equity Center, 1998). Federal laws and regulations support the notion that charter schools are not exempt from any special education requirements. Financially, charter schools struggle to gain the funding needed to provide for students with disabilities. There are several federal grants for which schools can apply.

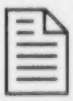
General Civil Rights Laws

Title VI of the Civil Rights Act of 1964

"Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Education" (www.ed.gov/offices/OCR/ocrttl6.html).

The Office of Civil Rights (OCR) within the U.S. Department of Education is responsible for enforcing Title VI and any discrimination complaints are to be filed with OCR, Regional OCR offices, or state departments of education. Also, contact the OCR for issues dealing with compliance of these civil rights laws, such as how to get and remain in compliance.

See Tool II: Office of Civil Rights, Regional Offices (Page 11)



Under Title VI, specific discriminatory actions prohibited in federally funded programs or activities include provisions of:

- Providing services, financial aid, or other benefits that are different or provided in a different manner
- Subjecting an individual to segregation or separate treatment in any matter related to his/her receipt of any service, financial aid, or other benefit under the program
- Denying an individual an opportunity to participate whether he/she satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided with any service, financial aid, or other benefit under the program (www.ed.gov/OCR/ocrttl6.html)

- Defeating or substantially impairing the objectives of federally assisted programs (Equity Center, 1998)

In *Lau v. Nichols* (1973), the U.S. Supreme Court found that Title VI requires a meaningful opportunity for limited-English-proficient (LEP) students to participate in public educational programs. This decision is the legal basis for the LEP policy of the Office of Civil Rights (Equity Center, 1998).

See Tool IV: References/Resources: Acronyms (Page 16)

Title VII of the Civil Rights Act of 1964

Title VII prohibits employers of 15 or more employees from discrimination in employment based on race, color, religion, sex, or national origin. This covers all private employers, state and local governments, education institutions, private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training.[1]

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972 " ... states that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (www.ed.gov/offices/OCR/ocrttl9.html).

Title IX requires:

- Designation of at least one employee to coordinate compliance with Title IX, including the investigation of alleged noncompliance
- Notification to all students and employees of the name, office, address, and phone number of its Title IX officer
- Adoption and publication of grievance procedures providing for prompt and equitable resolution of student and employee complaints
- Dissemination of policy on an ongoing basis (Equity Center, 1998)

1 For more information, see www.eeoc.gov

- Relationship to staff:
  - — Day-to day operations
  - — Hiring
  - — Use of a CEO/administrator

Board Manual

A board manual can be used as an orientation guide for new board members and as a resource for continuing board members. Keep the information in the board manual concise to avoid board members from feeling overwhelmed.

See Tool I: Board Manual Checklist (Page 11)
and
Tool II: Bylaws Checklist (Page 12) for examples of possible bylaws

Developing Committees

Committees are typically formed to perform certain tasks and to report to the whole board for final decisions and action. The number, size, and type of committees a school has will vary depending on your school's mission, vision, and governance structure. Clarification of committee roles and responsibilities is highly important. Committees should be expected to provide timely, accurate information to the board.

Two Types of Committees

1. Standing committees—permanent committees, established in bylaws, that relate to the ongoing governance of the school
2. Ad hoc, or special committees—limited charges and are created for specific purposes; may be disbanded when the need for them no longer exists[5]

5 Hurry, E. (1990). *Nonprofit Board Committees: How to Make Them Work*. Washington DC: National Center for Nonprofit Boards.

Basic Standing Committees Your School May Need

1. Committee on Trustees or Nominating Committee—in charge of self-management of the board (i.e., orienting and training new board members, evaluating the board)
2. Strategic Planning Committee—responsible for designing and developing both short- and long-term plans that are intended to fulfill the mission of the school
3. Finance Committee—responsible for the fiscal matters of the school; works with business manager; may acquire additional funds for the school

Board Member Development

Successful boards make board member development a priority. Ideas for making board member development a priority in your school include:

- Hold retreats or one-day, in-house sessions that focus on team building every year or two.
- Revisit the mission and vision often.
- Clarify roles and responsibilities of the board early; create job descriptions for board members.
- Plan for member development and leadership training.
- Keep members informed, and hold effective board meetings.
- Promote a positive relationship with the school through clear policies and procedures.
- Conduct new board member orientations and training.
- Offer continuous board development opportunities.
- Evaluate your board and board members on a continuous basis. The design of your evaluation will vary depending on the governance structure of your school. A third party is often needed to provide an unbiased view of your board.

Consultants are often hired to conduct board training, evaluation, and development opportunities. See the Core Founding Group and Accessing Experts sections of *Workbook 1: Start-Up Logistics* for more information.

Tool I: Federal Funding Program Description*

Program Title	Description	Authorizing Legislation	Funding Process
Charter School Development			
Public Charter Schools Program	Provides financial assistance for the planning, design, and initial implementation of charter schools	ESEA Title X, as amended by IASA	Grants available to SEA on a competitive basis
Underserved Students and Students with Special Needs			
Education of Disadvantaged Children	Provides financial assistance to school districts to improve teaching and learning of low-achieving children in high-poverty schools	ESEA Title I, as amended by IASA	Formula-based funding from LEA or SEA
Migrant Education	Supports high-quality education programs that address the special needs of migrant children and youth	ESEA Title I, as amended by IASA	Formula-based funding from LEA or SEA
Prevention and Intervention Programs for Neglected, Delinquent, or At-Risk Children	Provides financial assistance to state agencies that operate education programs for these children, community-day programs, or correctional institutions	ESEA Title I, as amended by IASA	Formula-based funding from LEA or SEA
Bilingual Education Programs	Supports whole-school reform to improve bilingual education or English as a second language	ESEA Title VII, as amended by IASA	Competitive grants available from ED in coordination with SEA
Education for Homeless Children and Youth	Provides assistance to establish a state office to coordinate education for homeless children and youth	Stewart B. McKinney Homeless Assistance Act	Formula-based funding from LEA or SEA
Indian Education	Support elementary and secondary school reform programs that serve Indian students, including preschool children	ESEA Title IX, as amended by IASA	Formula-based funding from LEA or ED
Native Hawaiian Education	Improves education opportunities and addresses culturally related academic needs of Native Hawaiian children	ESEA Title IX, as amended by IASA	Formula-based funding from SEA
Alaska Native Education	Improves educational opportunities and addresses culturally related academic needs of Alaska Native children	ESEA Title IX, as amended by IASA	Competitive grants available from ED
National School Lunch and School Breakfast Program	Provides nutritionally balanced, low-cost or free lunches and breakfasts	National School Lunch Act, Child Nutrition Act	Formula-based funding from SEA
Education of Children with Disabilities	The Grants to States program assists states in meeting the costs of providing special education and related services to children with disabilities aged 3 through 21	IDEA, as reauthorized in 1997	Formula-based funding from SEA
School Reform and Improvement			
Comprehensive School Reform Demonstration Program	Assists schools in developing comprehensive school reform based on reliable research and effective practices	Fiscal Year 1998 ED Appropriations Act	Competitive grants available from SEA
Innovative Education Program Strategies	Supports local education reform efforts that are consistent with and support statewide reform efforts under Goals 2000: Educate America Act	ESEA Title VI, as amended by IASA	Formula-based funding from SEA
State and Local Education Systemic Improvement	Assists states and communities in developing and implementing challenging academic content standards, student performance standards and assessments, and improving teacher training	Goals 2000: Educate America Act	Competitive grants available from SEA

Tool I: Federal Funding Program Description*—continued

Program Title	Description	Authorizing Legislation	Funding Process
School Reform and Improvement—continued			
Blue Ribbon Schools	Identifies and gives public recognition to outstanding public and private schools throughout the nation.	ESEA Title X, as amended by IASA	Competitive awards from ED (nonmonetary awards)
Eisenhower Professional Development State Grants	Supports professional development efforts at the state, higher education, district and school levels in the core academic subjects with a continued focus in mathematics and science.	ESEA Title X, as amended by IASA	Formula-based funding from SEA
Professional Development			
Technology Literacy Challenge Fund	Provides resources to speed the implementation of statewide strategies designed to enable all schools to integrate technology fully into school curricula.	ESEA Title III, as amended by IASA	Competitive grants available from SEA
Technology Innovation Challenge Grant Program E-Rate	Provides grants to consortia to improve and expand new applications of technology. Provides schools and libraries with affordable access to telecommunications and information services.	ESEA Title III, as amended by IASA Telecommunications Act of 1996	Competitive consortia grants available from ED Competitive grants available from Schools and Libraries Division
Career Education			
Vocational Education—Basic Grants to States	Assists states in improving their programs of vocational education and ensuring access to special populations.	Carl D. Perkins Vocational and Technical Education Act	Formula-based funding from SEA
Vocational Education—Tech-Prep Education, Perkins Act	Enables states to provide occupational training through linkages between secondary and postsecondary schools.	Carl D. Perkins Vocational and Technical Education Act	
Early Childhood			
Even Start	Supports family literacy programs for low-income families with children from birth through age seven that integrate early childhood education, adult literacy or basic education, and parenting education.	ESEA Title I, Part B, as amended by IASA	Competitive grants and formula based funding available from SEA Competitive grants available from SEA to school or community partnerships
Serving Communities			
21st Century Community Learning Centers	Supports schools with projects that benefit the education, health, social service, cultural, and recreational needs of a rural or inner-city community.	ESEA Title X, as amended by IASA	Competitive grants available from ED
Safe and Drug-Free Schools and Communities	Provides support to SEAs for a variety of drug- and violence-prevention activities focused primarily on school-age youth.	ESEA Title IV, as amended by IASA	Formula-based funding from SEA
Impact Aid	Provides assistance to LEAs that have lost property tax due to the presence of tax-exempt federal property or that have experienced increased expenditures due to increased enrollment.	ESEA Title VIII, as amended by IASA	Formula-based funding from ED

*Klein, D., Owens-West, R., Cohen, J., & Ogden, D. (1999). *Accessing federal programs: A guidebook for charter school operators and developers.*
For more information concerning grants, contact the U.S. Department of Education's Office of Elementary and Secondary Education.
3 For more information on the acronyms listed in this tool, refer to Tool IV.
4 For more information, see General Civil Rights Laws: Section F: Goals 2000.

Tool II: Office of Civil Rights, Regional Offices

Eastern Division

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Office for Civil Rights, Boston Office
U.S. Department of Education
J.W. McCormack Post Office and Courthouse
Room 222, 01-0061
Boston, MA 02109-4557 (617) 223-9662
Fax (617) 223-9669; TDD (617) 223-9695

New Jersey, New York, Puerto Rico, Virgin Islands
Office for Civil Rights, New York Office
U.S. Department of Education
75 Park Place, 14th Floor
New York, NY 10007-2146 (212) 637-6466
Fax (212) 264-3803; TDD (212) 637-0478

Delaware, Maryland, Kentucky, Pennsylvania, West Virginia
Office for Civil Rights, Philadelphia Office
U.S. Department of Education
3535 Market Street, Room 6300, 03-2010
Philadelphia, PA 19104-3326 (215) 596-6787
Fax (215) 596-4862; TDD (215) 596-6794

Southern Division

Alabama, Florida, Georgia, South Carolina, Tennessee
Office for Civil Rights, Atlanta Office
U.S. Department of Education
100 Alabama Street N.W., Suite 19T70
Atlanta, GA 30301-3104 (404) 562-6350
Fax (404) 562-6455

Arkansas, Louisiana, Mississippi, Oklahoma, Texas
Office for Civil Rights, Dallas Office
U.S. Department of Education
1200 Main Tower Building
Suite 2260, 06-5010
Dallas, TX 75202-9998 (214) 767-3959
Fax (214) 767-6509; TDD (214) 767-3639

North Carolina, Virginia, Washington, DC
Office for Civil Rights, District of Columbia Office
U.S. Department of Education
330 C Street S.W., Room 5074
Washington, DC 20202 (202) 260-9225
Fax (202) 260-7250

Midwestern Division

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Office for Civil Rights, Chicago Office
U.S. Department of Education
111 North Canal Street, Suite 1053
Chicago, IL 60606-7204 (312) 886-8434
Fax (312) 353-4888; TDD (312) 353-2540

Michigan, Ohio
Office for Civil Rights, Cleveland Office
U.S. Department of Education
600 Superior Avenue East
Bank One Center, Room 750
Cleveland, OH 44114-2611 (216) 522-4970
Fax (216) 522-2573; TDD (216) 522-4944

Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota
Office for Civil Rights, Kansas City Office
U.S. Department of Education
10220 North Executive Hills Boulevard
8th Floor, 07-6010
Kansas City, MO 64153-1367 (816) 880-4202
Fax (816) 891-0644; TDD (816) 891-0582

Western Division

Arizona, Colorado, Montana, New Mexico, Utah, Wyoming
Office for Civil Rights, Denver Office
U.S. Department of Education
Federal Building, Suite 310, 08-7010
1244 Speer Boulevard
Denver, CO 80204-3582 (303) 844-5695
Fax (303) 844-4303; TDD (303) 844-3417

California
Office for Civil Rights, San Francisco Office
U.S. Department of Education
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102-4102 (415) 437-7700
Fax (415) 437-7783; TDD (415) 437-7786

Alaska, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territory of the Pacific Islands
Office for Civil Rights, Seattle Office
U.S. Department of Education
915 Second Avenue, Room 3310, 10-9010
Seattle, WA 98174-1099 (206) 220-7880
Fax (206) 220-7887; TDD (206) 220-7907

Tool III: How To File a Discrimination Complaint with the Office of Civil Rights

Office of Civil Rights • U.S. Department of Education
600 Independence Avenue S.W. • Washington, DC 20202-1100
(202) 205-5413; 1-800-421-3481

The Office of Civil Rights (OCR) enforces five federal statutes that prohibit discrimination in programs and activities that receive Federal financial assistance from the Department of Education (ED). Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination is prohibited by Title IX of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990; and age discrimination is prohibited by the Age Discrimination Act of 1975.

The civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive federal financial assistance from ED. Programs and activities that receive ED funds must be operated in a nondiscriminatory manner. Such programs or activities may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment.

What To Do

Anyone wishing to file a formal complaint with OCR should submit in writing the following information in a letter or on the Discrimination Complaint Form available from OCR enforcement offices.

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required)
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s) [names of the injured person(s) are not required]
- The name and location of the institution that committed that alleged discriminatory act(s)
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination (race, color, national origin, sex, disability, or age)

A recipient may not retaliate against any person who has made a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under the five statutes listed above.

Who Can File

Anyone who believes that an educational institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age may file a complaint. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group.

Timeliness

A complaint must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by OCR for good cause.

Institutional Grievance Procedures

Prior to filing a complaint with OCR against an institution, a potential complainant may want to find out about the institution's grievance process and use that process to have the complaint resolved. A complainant is not required by law to use the institutional grievance procedure before filing a complaint with OCR. If a complainant uses an institutional grievance process and also chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after the last act of the institutional grievance process.[5]

5 Information adapted from the Office of Civil Rights. (1998). *How to file a discrimination complaint with the Office of Civil Rights.*

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Title VI, 34 C.F.R. § 100 (1997).

Title IX, 34 C.F.R. § 106.1 (1997).

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U.S. Equal Employment Opportunity Commission. (1997). *Title VII of the Civil Rights Act of 1964*. Washington, DC: Author. Retrieved May 17, 2000 from the World Wide Web: www.eeoc.gov/laws/vii.html

U.S. Equal Employment Opportunity Commission. (1997). *The Americans with Disabilities Act of 1990, Titles I and V*. Washington, DC: Author. Retrieved May 17, 2000 from the World Wide Web: www.eeoc.gov/laws/ada.html

Web Sites

EDInfo: Email distribution list with information from and about the U.S. Department of Education
Washington, DC, Peter Kickbrsh & Kirk Winters (Moderators)
www.ed.gov/MailingLista/EDInfo/ei-annou.html
Contains up-to-date information on new initiatives, research and statistics, and programs and services, including legislation, regulations, and policy guidance. Also provides timely information on grant opportunities.

U.S. Equal Employment Opportunity Commission
Washington, DC
www.eeoc.gov
Describes responsibilities for compliance of federal civil rights laws.

Acronyms

ESEA: Elementary and Secondary Education Act of 1965

IASA: Improving America's Schools Act of 1994

LEP: Limited English proficiency

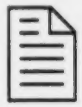
OCR: Office of Civil Rights

USDOE: U.S. Department of Education

Special Education

Special education programs are designed to address the unique educational needs of children with disabilities who meet the eligibility criteria under the law.[1] Key issues concerning special education laws and regulations continue to affect a number of charter schools today. Questions often arise concerning who is responsible for serving students with disabilities; how special education services are delivered; what special education requires; and how to locate special education services in a cost-effective way. Both federal and state laws govern special education. As a general rule, no exemption from any federal special education law may be waived. All charter schools are required to comply with the federal laws Section 504 of the Rehabilitative Act of 1973, the Individuals with Disabilities Education Act (IDEA), and Title II of the Americans with Disabilities Act of 1990 (ADA). These are three laws to learn and understand.

See Tool I: Glossary of Terms and Acronyms (Page 23)
and
Tool II: Special Education Laws (Page 29)



Section 504 of the Rehabilitative Act of 1973

"No otherwise qualified handicapped individual in the United States ... shall, solely by reason of ... handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."[2]

Section 504 protects all persons with a disability who:

- Have a physical or mental impairment that substantially limits one or more major life activities
- Have a record of such an impairment
- Are regarded as having such an impairment

1 Los Angeles Unified School District, 1997.
2 For more information, see www.pcc.edu/edserv/OSD/504.htm

Section 504 requires:

- A free, appropriate public education (FAPE)
- A written plan [may use an individual education program (IEP)]
- A school district to evaluate a child with handicaps before initial placement
- Only notice, not consent, for evaluations of the students
- Notice to parents regarding identification, evaluation, and/or placement
- Local education agencies (LEA) to provide impartial hearings for parents

Section 504 is not strictly a "special education" law. Section 504 is an antidiscrimination statute that protects every IDEA-eligible child and many more who do not qualify for IDEA services.

See Tool III: Suggested Components of an Individualized Education Program (IEP) (Page 26)

Defining an "appropriate" education:[3]

An appropriate education may be defined in different ways. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services in separate classrooms for all or portions of the day. An appropriate education will include:

- Nondiscriminatory evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services
- Educational services designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met

3 Information adapted from the Office of Civil Rights. (1992). *The rights of individuals with handicaps under federal law: Information for those who have rights and responsibilities under Section 504 of the Rehabilitation Act of 1973.*

- The education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability
- Establishment of due process procedures that enable parents and guardians to review their child's records and challenge evaluation and placement decisions, and that provide an impartial hearing with opportunity for participation by parents and representation by counsel, and a review procedure

Individuals with Disabilities Education Act (IDEA)

IDEA, formerly known as the Education of the Handicapped Act, is "an education act to provide federal financial assistance to state and local education agencies to guarantee special education and related services to eligible children with disabilities." [4]

IDEA requires:

- Free, appropriate public education (FAPE)
- Children be provided an individualized FAPE in the least restrictive environment (LRE)
- An individualized education program (IEP) document with specific content
- A zero reject policy; all students are to be provided an equal opportunity, and no states may deny an education on the basis of a disability
- A written notice to parents regarding identification, evaluation, and/or placement
- A comprehensive evaluation with parental consent; reevaluation every three years
- Local education agencies (LEA) to provide impartial hearings for parents

See Tool IV: Program Options from the Least Restrictive Environment (LRE) to the Most Restrictive Environment (Page 28)

4 From www.ed.gov/databases/ERIC_Digests/ed389142.html

IDEA was amended in 1997 to include:

- **Child Find:** Under current law, there is a requirement to identify, locate, and evaluate all children with disabilities who are in need of special education and related services and who are living in the district. Also known as a systematic search.
- **IEP:** A statement of how the child's disability affects his or her involvement and progress in the general curriculum; a statement of special education and related services, as well as the supplementary aids and services that the child needs in order to make progress in the general curriculum.
- **LRE:** Maintains the prior LRE requirements and adds that, if a state's funding formula is not consistent with LRE, an assurance must be provided that it will be.
- **Evaluation:** If sufficient information exists, the LEA is not required to conduct additional testing.
- **Placement:** Explicitly states the parents' rights to be involved in all placement decisions regarding their child.
- **Due Process:** Parents have the right to request a due process hearing to challenge a decision regarding the identification, evaluation, or placement of their child.[5]

Differences between Section 504 and IDEA:

- Definition of a disability under Section 504 is broader than under IDEA
- A child eligible under Section 504 may not necessarily be eligible under IDEA
- Section 504 does requires a written plan but not necessarily an IEP
- Unlike IDEA, Section 504 does not supply grants to implement its mandates

Americans with Disabilities Act (ADA) of 1990

Title II of the ADA broadens Section 504's prohibition against discrimination on the basis of disability to all activities of state and local governments, whether or not they receive federal funds.

5 For more detailed information, see the LRP Publications. (1999). *1997 IDEA amendments: An overview of key changes* [Pamphlet]

ADA does not directly require:

- A free, appropriate public education (FAPE), although the ADA provides additional protection in combination with actions brought under Section 504 and IDEA
- Funding to implement requirements, although limited tax credits may be available for removing architectural or transportation barriers
- Procedural safeguards; it does detail the administrative requirements, complaint procedures, and the consequences for noncompliance

Differences between the ADA and Section 504:

- The ADA refers to individuals with "disabilities," and Section 504 uses the term "handicap"; the same definition is used in both laws
- Unlike Section 504, the ADA does prohibit discrimination on the basis of association with a disabled person
- Unlike Section 504, the ADA does apply to public schools regardless of their acceptance of federal funding

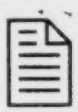
Suggestions in Determining Special Education Eligibility

In order to determine which law applies to students with disabilities, a special education process needs to be followed. This process will determine whether or not students with disabilities are eligible for special education services and if so, what special education services are the most appropriate for each child. There are guidelines a school should follow when completing this process. Schools may find these guidelines from their district or from their state department of education. The suggested process includes:

- Referral for assessment
- Assessment
- Development and implementation of an Individualized Education Program (IEP)
- IEP review

Evaluation and implementation of these steps are necessary in order to assess if your school is the best place for particular students with disabilities.

See Tool II: Federal Definition of Special Education Disability Categories (Page 25) and
Tool VI: Special Education Program Components (Page 30)



Compliance Suggestions: Ways To Meet the Needs of Children

Charter schools need to be made aware of the differences among the three federal special education laws to ensure compliance at all times. Compliance is increased if a school concentrates on:

Collaboration:

- Work with your local education agency (local school district) to reach an understanding of what needs to be accomplished in terms of special education requirements
- Work with your state education agency (state department of education) to identify state-specific charter school law pertaining to special education
- Work directly with your Regional Office of Civil Rights in order to know and understand special education requirements; 12 Regional OCR enforcement offices have plenty of information needed to identify necessary resources concerning implementation

Contracting out services in a cost-effective way:

- Often, districts share special education teachers
- Occupational therapists; check your local health services for more information
- University special education programs; this may depend on whether your town or city has a university close by
- Office of Special Education and Rehabilitative Services (OSERS)
- Office of Special Education Programs (OSEP)

Special Education Funds

As many charter schools know, it is difficult to be aware of every possible grant available in any given school year. The National Information Center for Children and Youth with Disabilities (NICHCY) State Resource Sheet (www.nichcy.org/states.htm) for each individual state can be helpful for you to locate organizations and agencies within your state that address disability-related issues. These state-level agencies and organizations can often refer you to local sources of information and assistance, such as grant opportunities. Often, charter school statutes provide information about special education funding by directing that charter schools receive a fair share of state and federal categorical funds.

See Civil Rights: Tool I: Federal Funding Program Description in this workbook (page 9) for more information on specific grants.

Americans with Disabilities Act (ADA): Prohibits discrimination against persons with disabilities and requires affirmative action, including mandatory accommodations, to ensure that discrimination does not occur in employment, public access to facilities and services, transportation, communication, and government services.

Direct services: Services in which special education personnel (including special education teachers, speech and language pathologists, and other professionals) work with students to remediate difficulties or to provide enrichment or acceleration.

Disability: Medical, social, or learning difficulty that interferes significantly with in individual's normal growth and development.

Due process clause: The part of the Fourteenth Amendment to the U.S. Constitution that forbids states from depriving anyone of life, liberty, or property without due process of law.

Education for All Handicapped Children Act (1975): First compulsory special education law; mandates a free and appropriate education for all students with disabilities between the ages of 3 and 21—a.k.a. Public Law 94-142.

Indirect services: Services provided to regular classroom teachers and others to help them meet the needs of exceptional students; also called consultative services.

Individualized education program (IEP): A written document that includes: (1) a statement of the student's present levels of functioning, (2) a statement of annual goals and short-term objectives for achieving those goals, (3) a statement of services to be provided and the extent of regular programming, (4) the start date and expected duration of services, and (5) evaluation procedures and criteria for monitoring progress.

Individuals with Disabilities Education Act (IDEA): Requires recipients of federal funding under the Act to comply with procedural and due process requirements to ensure that children with disabilities are provided with a free, appropriate public education.

Learning disability: Disorder in one or more of the basic psychological processes involved in understanding or using language; may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

Least restrictive environment: Educational setting as much like the regular classroom as possible.

Local education agency (LEA): Local school district.

Related services: Supplemental services provided by trained personnel to help a student benefit from special education; these activities include psychological testing and counseling, occupational therapy, school health services, and transportation.

Section 504 of the Rehabilitation Act of 1973: Prohibits discrimination on the basis of disability by any agency that receives federal financial assistance.

State education agency (SEA): State-level educational administration or organization (e.g., state departments of education, Office of Public Instruction).

Acronyms

ADA: Americans with Disabilities Act (1990)

FAPE: Free, appropriate public education

IDEA: Individuals with Disabilities Education Act (1975)

IEP: Individualized Education Program

LEA: Local education agency

LRE: Least restrictive environment

OCR: Office of Civil Rights

OSEP: Office of Special Education Programs

OSERS: Office of Special Education and Rehabilitative Services

SEA: State education agency

Section 504: Section 504 of the Rehabilitation Act of 1973

USDOE: United States Department of Education

Tool II: Federal Definitions of Special Education Disability Categories[6]

Specific learning disability: A disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, write, spell, or do mathematical calculations; this includes perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, but does not include learning problems resulting from visual, hearing, or motor handicaps, or from mental retardation.

Seriously emotionally disturbed: Exhibition of behavior disorders over a long period of time that adversely affects educational performance; this includes an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behaviors or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.

Speech impaired: Communication disorders, such as stuttering, impaired articulation, and language or voice impairments, that adversely affect educational performance.

Mentally retarded: Significantly subaverage general intellectual functioning with concurrent deficits in adaptive behavior that were manifested in the development period and that adversely affect educational performance.

Visually impaired: A visual impairment that, even with correction, adversely affects educational performance, including students who are partially sighted or completely blinded.

Hard of hearing: A hearing impairment, permanent or fluctuating, that adversely affects educational performance but that is not included in the deaf category.

Deaf: A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

Orthopedically impaired: A severe orthopedic impairment that adversely affects educational performance, including those caused by congenital anomaly, disease, or other causes.

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6 Wagner, M., Newman, L., D'Amico, R., Jay, E.D., Butler-Nalin, P., Mendin, C., & Cox, L. (1991). *Youth with disabilities: How are they doing? The first comprehensive report from the National Longitudinal Transition Study on Special Education Students.*

Other health impaired: Limited strength, vitality, or alertness due to chronic or acute health problems that adversely affect educational performance (includes autistic students).

Multiple handicapped: Concomitant impairments, the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments (does not include deaf/blind).

Deaf/blind: Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind students.

Tool III: Suggested Components of an Individualized Education Program (IEP)[7]

What is an IEP?*

The IEP is a written plan that describes a child's abilities and needs, and the placement and services designed to meet the child's unique needs. Students with disabilities must have IEPs before they can receive special education services. This IEP must be implemented as soon as possible after the IEP meeting.

If the child is found to be eligible for special education services, the IEP should contain:

- Annual goals and short-term objectives focusing on the child's current level of performance.
- The services that the child will receive.
- When services will begin, how often they will be provided, and for how long.
- The instructional program(s) where these services will be delivered.
- The amount of time the child will spend in general education. If the child is not educated completely in general education, it should state why.
- How the school will measure the child's progress.

*NOTE: These components are specific to this district and may change depending on your state charter law.
7 Adapted from the Los Angeles Unified School District, 1997.

IEP Team Participants should include:

- Parent
- At least one regular education teacher
- At least one special education teacher or provider
- One LEA representative who is qualified and knowledgeable
- An individual who can interpret the instructional implications of evaluation results
- The child, whenever appropriate[8]

Children with disabilities should attend the school they would ordinarily attend if they were not in special education. This requirement may be waived when a student's IEP requires it and states why. Parents will receive a copy of the IEP at the IEP meeting and have the right to disagree or agree with any part of the IEP. The school is required to obtain parental consent before the child receives special education services.

8 Adopted from the 1997 IDEA Amendments, 1999

Tool IV: Program Options from the Least Restrictive Environment (LRE) to the Most Restrictive Environment[9]

Program	Description
General education classes	Whenever appropriate, students with disabilities will be educated in general education classes. In addition, whenever possible, they will attend the school they would ordinarily attend if they were not in special education.
General education classes with consultation	In order for students with disabilities to be appropriately educated in general education classes, it may be necessary for teachers to consult with special education personnel to receive guidance and support.
General education classes with designated instruction and services (DIS)	Designated instruction and services (DIS) assist students with disabilities to benefit from their general education program. Some examples of DIS are language and speech services, adapted physical education, counseling, and physical and occupational therapy.
General education classes and resource specialist program	A resource specialist program provides instruction and services to students with disabilities assigned to the general education classroom for the majority of the school day. The goal of the resource specialist program is to enable students with disabilities to succeed in the general education environment.
General education classes and special day classes	Depending on their needs, students with disabilities may be educated in general education classes for part of the school day and special day classes for the other part of the school day.
Special day classes	Special day classes serve students who, because of their disabilities, cannot participate in general education classes for a majority of the school day. These classes are provided on general education sites.
Special schools/centers	Students are enrolled in special schools/centers when it is determined that the nature and severity of their disabilities require more intensive educational instruction. As appropriate, students enrolled in special schools interact with their general education peers through academic, nonacademic and extracurricular activities.
Nonpublic schools	When no appropriate public education program is available, a student with disabilities may be placed in a nonpublic school under contract with the district.
Home or hospital	Students with a verified medical or emotional condition that prevents them from attending school may receive services on a temporary basis in the home or a hospital.
State residential schools	State residential schools provide comprehensive assessment and services for students with visual and/or hearing disabilities.

[9] Adapted from the Los Angeles Unified School District, 1997

Tool V: Special Education Laws

Component	Section 504 of the Rehabilitation Act of 1973	Individuals with Disabilities Education Act of 1975	Americans with Disabilities Act of 1990
TYPE/PURPOSE	A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.	An education act to provide federal financial assistance to state and local agencies to guarantee services to disabled children.	A civil rights law to prohibit discrimination on the basis of disability in employment, public services, and accommodations.
WHO IS PROTECTED?	Any individual with a disability who: (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment.	Children ages 3-21 who are determined to be eligible for services within one or more of 13 specific categories of disability.	Same as Section 504.
FREE APPROPRIATE PUBLIC EDUCATION (FAPE)	Yes. Students can receive services under Section 504 even if they are not provided any special education. Section 504 does require a written plan, in which case the IEP of IDEA may be used.	Yes. IDEA requires the development of an IEP with specific content and a required number of IEP meeting participants.	Not directly. ADA provides additional protection in combination with actions brought under Section 504 and IDEA.
FUNDING TO IMPLEMENT REQUIREMENTS	No. State and local jurisdictions have responsibility. IDEA funds may not be used to serve children found eligible only under Section 504.	Yes. IDEA provides federal funds under Parts B and H to assist State and local agencies in meeting IDEA requirements to serve disabled infants, toddlers, and children/youth.	No, but limited tax credits may be available for removing architectural or transportation barriers. Many federal agencies provide grants.
PROCEDURAL SAFEGUARDS	Section 504 requires notice to parents regarding identification, evaluation, and/or placement. Written notice is recommended.	IDEA requires written notice to parents (prior to changes in placement) regarding identification, evaluation, or placement of a student.	The ADA does not specify procedural safeguards related to special ed., it does not detail requirements, procedures, and noncompliance consequences.
EVALUATION/PLACEMENT PROCEDURES	Unlike IDEA, Section 504 requires only notice, not consent, for evaluation.	A comprehensive evaluation (with prior parental consent) is required. Reevaluation is required at least every three years. IDEA delineates specific requirements for	The ADA does not specify evaluation and placement procedures.
DUE PROCESS	Section 504 requires LEAs to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student.	LEAs to provide impartial hearings.	The ADA does not delineate specific due process procedures.

Tool VI: Special Education Program Components[10]

Components of a special education program

Identification—continuous effort to identify, locate, and screen students in need

Referral—a formal, ongoing process for reviewing information related to special needs

Assessment or reassessment—process to determine specific areas of need

Individualized education program (IEP) planning—a pupil's educational needs based on assessment data and completing a written IEP program

Instructional delivery of programs—the LEA system to ensure alternative placements

Staffing—required and qualified personnel identification in relation to a pupil's needs

Facilities—actual locations of schools allowing students with disabilities to interact with students who do not have disabilities

Parent involvement/due process—refers to the parental rights in all aspects of acquiring, developing, planning, and implementing special education services

Personnel development—focuses on preservice and inservice needs in order to plan a special education program

Interagency relations—refers to the collaboration of agencies to service special needs

Transportation—the physical movement of students with disabilities between homes and instructional facilities for both regular and special education programs and activities

Instructional resources—specific supplies, equipment, and instructional materials

Coordination with other educational programs—the process that schools or districts use to provide special education within the context of all other educational programs

Fiscal resources—the means for purchasing and/or obtaining the supplies, materials, equipment, services, and personnel required to provide programs for special services

Governance—the administrative structure and long-range plans through which the special education system operates

10 Information adapted from Lange, C.M. (1997). *Special education and charter schools: A handbook.*

Recommendations for charter school founders and operators

- Consider special education and the charter school's philosophical orientation and mission in relationship to staffing, service delivery, and inclusion practices when writing the proposal or planning the school's goals and objectives
- Outline special education policies prior to opening the school
- Contact state education agency personnel and ask about all aspects of special education, especially the state charter school and special education laws
- Determine how special education funding works early in the process of developing the charter school to avoid delays in receipt of funds due to lack of information
- Determine who will provide special education services prior to opening the school
- Consider using an outside consultant or hiring a staff person to assist in setting up evaluation teams, procedures, and financial reimbursements
- Be consistent in the delivery of educational services for all students and be innovative in special education

Tool VII: References/Resources

Klein, D., Owens-West, R., Cohen, J., & Ogden, D. (1999). *Accessing federal programs: A guidebook for charter school operators and developers*. Washington DC: U.S. Department of Education, Office of Elementary and Secondary Education. Retrieved May 22, 2000 from the World Wide Web: www.uscharterschools.org/tech_assist/acc_fed/

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Web Sites

Education Product Group: Special Education
Horsham, PA: LRP Publications
www.lrp.com/Education/special.htm
Looseleaf case law reporters/CD-ROM/software; newsletters; book and treatise products; Special reports/pamphlets; audio and video; and additional resources.

ERIC Clearinghouse on Disabilities and Gifted Education
Reston, VA: The Council for Exceptional Children
ericec.org
Multiple links to special education related materials including fact sheets, digests, laws, discussion groups, questions and answers service, and an ERIC database search. An excellent resource containing numerous Internet sites, books, newsletters, databases, and listservs pertaining directly to grants and funding information.

Federal Resource Center for Special Education (the FRC)
Washington, DC
www.dssc.org/frc
A special education technical assistance project funded by the U.S. Department of Education's Office of Special Education and Rehabilitative Services, and is part of the Regional Resource and Federal Centers Network.

The National Center for Children and Youth with Disabilities (NICHCY)
Washington, DC
www.nichcy.org
The national information and referral center that provides information on disabilities and disability-related issues for families, educators, and other professionals. Publications, FAQs, and state resource sheets.

The National Center on Educational Outcomes (NCEO)
Minneapolis, MN: University of Minnesota, College of Education & Human Development
www.coled.umn.edu/nceo
NCEO provides national leadership in the identification of outcomes and indicators to monitor educational results for all students, including students with disabilities. NCEO addresses the participation of students with disabilities in national and state assessments, standards-setting efforts, and graduation requirements.

Office of Civil Rights Regional Enforcement Offices
Washington, DC: U.S. Department of Education
www.ed.gov/offices/OCR/ocregion.html
Consists of 12 enforcement offices throughout the nation.

Office of Special Education and Rehabilitative Services (OSERS)
Washington, DC: U.S. Department of Education
www.ed.gov/offices/OSERS
Supports programs that assist in educating children with special needs, rehabilitation services for youth and adults with disabilities, and supports research to improve the lives of individuals with disabilities.

Office of Special Education and Rehabilitative Services (OSERS/OSEP): Grants and Contracts Competition
Washington, DC: U.S. Department of Education
www.ed.gov/offices/OSERS/OSEP/Funding/Funding.html
Provides information on new and current grants, as well as grant applications and forms, available through the U.S. Department of Education.

Office of Special Education and Rehabilitative Services: Program Funded Activities
Washington, DC: U.S. Department of Education
www.ed.gov/offices/OSERS/OSEP/Programs/PFA_Home.html
Provides a description of program activities funded during fiscal year 1997 under the Individuals with Disabilities Education Act, and administered by the Office of Special Education Programs.

Office of Special Education Programs (OSEP)
Washington, DC: U.S. Department of Education
www.ed.gov/offices/OSERS/OSEP
OSEP is a component of OSERS. OSEP's mission and organization focus is on the free appropriate public education of children and youth disabilities from birth through age 21.

The Policymaker Partnership for Implementing IDEA
Alexandria, VA: National Association of State Directors of Special Education
www.ideapolicy.org/pmp.htm
PMP is part of the National Association of State Directors of Special Education, Inc. (NASDSE). This site provides information on IDEA '97, PMP activities, satellite conferences, and discussion rooms.

Special Education Resources on the Internet (SERI)
Frederick, MD: Hood College
www.hood.edu/seri/serihome.htm
A collection of Internet accessible resources related to special education.

U.S. Department of Education
Washington, DC
www.ed.gov
Contains up-to-date information on new initiatives, research and statistics, and programs and services-including legislation, regulations, and policy guidance.

U.S. Government Printing Office
Washington, DC: Superintendent of Documents
www.access.gpo.gov
Contains access to government information products.

Other Federal Regulations

Some charter schools will develop policies pertaining to the federal laws in order to remain in compliance with them. Developing policy is an important step in the process of compliance. It allows charter schools to not only know the law, but also to go through the implementation step to ensure compliance.

See Tool I: References/Resources for a list of Acronyms (Page 37)

Family Education Rights and Privacy Act (FERPA) of 1974

FERPA is a federal law designed to protect the privacy of a student's education records. The law applies to all schools receiving federal funds. FERPA requires the school district to:

- Grant parents and students over 18 access to education records and restricts disclosure of the information without their consent
- Provide a parent an opportunity to seek correction of the record they believe to be inaccurate or misleading
- With some exceptions, obtain the written permission of a parent before disclosing information contained in the student's education record

The privacy of special education records is protected by FERPA and the Individuals with Disabilities Education Act. Any participating agency or institution that collects, maintains, or uses personally identifiable information about students with disabilities must protect the privacy of these special education records.[1]

Equal Access Act

The Equal Access Act is a law passed in 1984 that requires public schools to allow students to meet before and after classes for religious purposes, including prayer. The law applies to all public schools that receive federal financial assistance and addresses student free speech rights, including religious rights.

1 For more information, see nces.ed.gov/pubs97/p97527/SEC2.SUM.htm

Fair Labor Standards Act (FLSA)

The FLSA regulates employment relationships in four areas: minimum wages, overtime, child labor, and equal pay.[2]

The Family and Medical Leave Act (FMLA) of 1993[3]

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles. FMLA is enforced by the U.S. Department of Labor. Family and medical reasons include:

- The birth or adoption of a child
- The care of a child, spouse, or parent who has a serious condition
- The employee's own serious health condition

See your state law to find out what is applicable to your school.

Occupational Safety and Health Act (OSHA) of 1970

In general, coverage of the Act extends to all employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and all other territories under federal government jurisdiction. As defined by the Act, an employer is any "person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State." The general duty clause of the Act states that each employer "shall furnish … a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."[4]

For OSHA requirements, check with your state department of health or your local health department.

The Drug-Free Workplace Act of 1988

The Act requires federal grant recipients to adopt a policy that prohibits the use or possession of drugs in the workplace.

2 For more information, see www.stw.ed.gov.
3 For more information, see www.dol.gov/public/regs/compliance/whd/whdfs28.htm
4 U.S. Department of Labor. (1997). *Small business handbook. Safety and health standards.*

Drug-Free Schools and Campuses

Requires recipients of federal funds to adopt and enforce a drug-prevention program for both students and employees.

Tool I: References/Resources

Massachusetts Charter School Resource Center. (1997). *The Massachusetts charter school handbook* (3rd ed.). Boston, MA: Pioneer Institute for Public Policy Research.

Gardner, L. (1998). *Guide to the Brown Act*. Sacramento, CA: California State University, Institute for Education Reform, Charter School Development Center.

Nowadzky, R.A. (1996). A comparative analysis of public records statutes, 28 URB. LAW 65. *The Urban Lawyer, 28*(1), 65-91.

Premack, E. (1998). *Charter school development guide: California edition* (Rev. ed.). Sacramento, CA: California State University, Institute for Education Reform, Charter Schools Development Center.

U.S. Charter Schools. (1997). *State and federal legislation: Variation of legal definitions and responsibilities by state*. San Francisco, CA: WestEd, & Sacramento, CA: California State University, Charter Schools Development Center. Retrieved May 26, 2000 from the World Wide Web: www.uscharterschools.org/tech_assist/ta_legal.htm=statefed

U.S. Department of Education **Web Site**

www.ed.gov

Contains up-to-date information on new initiatives, research and statistics, and programs and services, including legislation, regulations, and policy guidance.

Acronyms

FMLA: The Family and Medical Leave Act of 1993

FLSA: Fair Labor Standards Act

FERPA: Family Education Rights and Privacy Act

OCR: Office of Civil Rights

USDOE: U.S. Department of Education

State Regulatory Issues

Following are some issues charter schools need to be aware of as they go through the preoperational and operational stages of development.

See Tool I: References/Resources for this section (Page 43)

Legal Status

The exact legal status of a charter school depends on the specific terms of the state laws under which it is established. In many states, charter schools are highly independent legal entities with a legal status separate from that of their sponsoring agency.

- Charter schools need legal status to own property, sue or be sued, incur debt, control budget and personnel, and contract for services.[1]

See the Legal Status Issues section of the Start-up Logistics workbook for more information.

Waiver Status

Waiver status means that states provide an automatic blanket waiver from most or all state and local education laws and regulations. In some states the charter school law automatically grants charter schools a waiver; in others there is no such waiver. Charter school laws often specify that civil rights and health/safety laws cannot be waived.

Collective Bargaining

Collective bargaining agreements usually include teachers' union wages, working conditions, and terms of employment negotiations with school authorities. States may exempt charter schools from collective bargaining agreements or specify that the charter school may or must bargain with employees independent of existing bargaining agreements. Some require that staff be subject to existing bargaining agreements. This issue is state-specific; refer to your state charter school law for more information.

1 For more information, see www.uscharterschools.org/tech_assist/ta_legal.htm

Open Meeting Law[2]

All 50 states have some form of an open meeting law requiring that certain decisions be made openly (Caplan, G.A., & Gilvard, J.A., 1998, p. 1). For example, California's open meeting law is known as the Brown Act. The Brown Act guarantees the public's right to attend and participate in meetings of local legislative bodies.

Basics of the Brown Act:

- Regular meetings (normal, scheduled business meetings of the board):
  - — must post an agenda with a brief description of each matter at least 72 hours in advance
  - — items not on the posted agenda may be considered under special circumstances
  - — minutes should be taken and are open to the public
- Special meetings (called before the next regularly scheduled board meeting):
  - — 24-hour notice must be provided to board members and media outlets that request notification in writing
  - — agenda must be posted 24 hours in advance; only items posted may be discussed
  - — minutes should be taken and are open to the public
- Emergency meetings (in the case of work stoppage or crippling disaster):
  - — one-hour notice must be given by phone to the local media
  - — only listed agenda items may be considered
  - — minutes should be taken and are open to the public

Closed sessions:

Normally all board meetings are open to the public. However, a closed session may be conducted when considering the following issues:

- Specified personnel matters

2 Information adapted from Gardner, L. (1998). *Guide to the Brown Act*.

- Pending litigation
- Labor negotiations
- Real estate negotiations
- Public security
- Student discipline

The Brown Act is specifically for California. Each state will have its own open meetings act.

Public Records Act

The Public Records Act requires that certain government records be available for public inspection. Each state has a public records statute, and most are modeled after the federal Freedom of Information Act (FOIA). Records commonly not included in the Act are:

- Medical and personnel records.
- Library records (those pertaining to the identification of library patrons with specific materials or services).
- Trade secrets and examinations (excluded are information containing trade secrets, personal information relating to educational records, and questions and scoring keys for various exams).
- Law enforcement agency records (treated differently from state to state; regarding criminal history record information).
- Internal affairs investigations (within police departments), generally confidential.
- Attorney-Client privilege and attorney work product. "All states, except Arkansas, provide some type of exemption or basis for nondisclosure in one or both areas" (Nowadzky, R.A., 1996).

Nowadzky (1996) states that the law on public records will continue to develop through both statutory amendment and case law. Charter schools need to have an understanding of the law and be aware of the changes.

Facilities/Services[3]

Generally, all health and safety laws and regulations are state-specific. However, schools should be familiar with the federal Occupational Safety and Health Act of 1970 (OSHA), as well as the general requirements under their state law. For more information, contact your local or state department of health.

Health Issues

Regarding the general health requirements, it is critical that all schools develop a health policy in accordance with federal and state regulations (such as OSHA). Charter schools often incorporate their health policy in their student handbook and make it available to everyone. Some examples of student handbook components are:

- Immunizations—Establish whether students and staff will be required to submit records of immunizations for common diseases or other related medical records.
- First aid and medical treatment—Establish policies relating to the administration of prescription drugs and other medicines; establish a policy regarding emergency response training for students, staff, and volunteers.
- Health screening/physical exams—Establish policies related to physical exams prior to original entry into a public school and exams thereafter; identify exams for athletics.
- Disease prevention—Establish policies related to preventing contact with blood-borne diseases. Have a designated "blood" handler for situations (i.e., a first-response team).
- Drug-, alcohol-, and tobacco-free schools—Establish a policy that the school functions as a drug-, alcohol-, and tobacco-free school.
- School lunch program—Develop a policy for a free or reduced-price lunch program to aid lower-income families.

Check your state and local regulations on facility safety policies and procedures.

3 Some suggestions adapted from Premack, E. (1998). *Charter school development guide: California edition* (Rev. ed.).

Safety Issues

In order to establish safety policies in accordance with federal and state regulations, schools may want to work with school insurance and risk management experts to develop a comprehensive risk management, health, and safety plan. Some examples for safety policies include:

- Facilities safety and security—"Any facility that serves as a public school will have a number of federal, state and (possibly) local building laws and ordinances with which it must comply" (Charter School Resource Center, 1997). These may include: square-foot requirement for each classroom; hazardous construction materials; plumbing, electric, and water utilities; outdoor spaces, parking, walkways, doors, windows, ceiling heights; air quality, heat supply, and cigarette smoking; and fire alarms and extinguishers.
- Disaster preparedness—Establish policies and procedures for response to natural disasters, emergencies, and crisis situations including fires and earthquakes; include a schedule for regular drills and other needed activities on contacting parents during emergency situations.
- Emergency "action" plan—Establish an action plan for emergency situations such as a crisis situation. Make sure the staff and the students know the plan.
- Building and zoning codes—Establish building and zoning codes in accordance with federal, state, and local regulations.
- Transportation—Establish a policy regarding children within the local school district and children who reside outside the school district; polices for special education students.
- Employee background check—Establish a policy requiring that each employee of the school submit to a criminal background check; may include fingerprinting.
- Athletics/field trips—Establish a policy identifying procedures for athletic and field trips.
- Operational policies—Establish day-to-day operating procedures.
- Child abuse reporting—Establish a contact within the school (e.g., the school counselor) for abuse and/or neglect concerns. Develop a policy that designates a specific person and procedure for reporting.

For more information on OSHA, see Other Federal Regulations (page 36).
Check your state and local regulations on facility safety policies and procedures.

Privacy Issues

Charter schools, as public schools, may run into the problematic issue of a student's right to privacy. Also, schools will need to be aware of the need to create a safe environment for the students. These are difficult topics to find solutions to. Charter school operators may find themselves needing to develop a policy in relation to this issue in order to clarify their stance on a safe environment and/or a students' constitutional right to privacy. Health and safety policies can be very difficult to develop and evaluate, but are often necessary tools for being prepared.

Tool I: References/Resources

Gardner, L. (1998). *Guide to the Brown Act*. Sacramento, CA: California State University, Institute for Education Reform, Charter School Development Center.

Massachusetts Charter School Resource Center. (1997). *The Massachusetts charter school handbook* (3rd ed.). Boston, MA: Pioneer Institute for Public Policy Research.

Nowadzky, R.A. (1996). A comparative analysis of public records statutes, 28 URB, LAW 65. *The Urban Lawyer*, *28*(1), 65-91.

Premack, E. (1998). *Charter school development guide: California edition* (Rev. ed.). Sacramento, CA: California State University, Institute for Education Reform, Charter Schools Development Center.

U.S. Charter Schools. (1997). *State and federal legislation: Variation of legal definitions and responsibilities by state*. San Francisco, CA: WestEd, & Sacramento, CA: California State University, Charter Schools Development Center. Retrieved May 26, 2000 from the World Wide Web: www.uscharterschools.org/tech_assist/ta_legal.htm=statefed

Web Sites

Center for Education Reform
Washington, DC
www.edreform.com
A national, non-profit education advocacy group providing resources, support, and guidance for school reform.

Charter School Development Center
Sacramento, CA: California State University, Institute for Education Reform
www.csus.edu/ier/charter/charter.html
Provides technical assistance and resources to charter school developers, operators, and charter-granting agencies in California and nationally.

Charter Friends National Network
St. Paul, MN: Hamline University, Center for Policy Studies
www.charterfriends.org
Provides a directory of state contacts, a toolkit, publications, and a charter events calendar.

Charter School Research Project
Syracuse, NY: Syracuse University
csr.syr.edu
Recent research and discussion area used for compiling bibliographic citations and discussion around charter research. Site revolves around participation.

EdLaw
Hollywood, FL: The EDLAW Center
www.edlaw.net
SpeciaLaw: deals with IDEA, Section 504, FERPA, ADA covering all statutes and regulations

U.S. Charter Schools
San Francisco, CA: WestEd, & Sacramento, CA: California State University, Institute for Education Reform, Charter Schools Development Center
www.uscharterschools.org
Overview of charter schools, reports and research, news and announcements. Information on starting and running a charter school, discussion groups, resource directory, state information and contacts, and charter school profiles.

U.S. Department of Education
Washington, DC
www.ed.gov
Contains up-to-date information on new initiatives, research and statistics, and programs and services-including legislation, regulations, and policy guidance.

U.S. Government Printing Office
Washington, DC: Superintendent of Documents
www.access.gpo.gov
Contains access to government information products.

Tool II: Charter School Development Checklist

Task	Person(s) Responsible	Resources Needed (e.g., budget, committees)
Regulatory Issues		
Review your state charter school law		
Establish compliance with all state and federal requirements		
Review civil rights/equity issues		
Develop health and safety policy handbook		
Establish a special education program		
Apply for grants for special education funds		
Identify special education needs		
Develop IEPs		
Identify local, state, and federal resources		

Northwest Regional Educational Laboratory